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6 **UNITED STATES BANKRUPTCY COURT**
7 **NORTHERN DISTRICT**
8 **(SAN FRANCISCO DIVISION)**

9 In re:

10 PG&E CORPORATION

Bankruptcy Case

No. 19-30088-DM

11 -and-

Chapter 11

(Lead Case)

12 PG&E GAS AND ELECTRIC COMPANY

(Jointly Administered) Case

13 Debtors

No. 19-30089-DM

14 vs.

15 Theresa Ann McDonald

Proof of Claim No. 54975

16 Creditor

Filed October 21, 2019

Camp Fire

Judge: Honorable Dennis Montali

19 Emergency Pleading in Reply to the
20 The Discussion About The Need For
21 Estimation Of Claims From Judge
22 James Donato, U.S. District Court
23 Judge for the Northern District of
24 California

25 Relief Requested: Contact Judge
26 Donato To Determine If And When
27 He Will Produce His Estimation
28 Of Claims Order

1
2 I am a fire victim claimant and a creditor in the Chapter 11 case. I listened to
3 most of the Confirmation Hearing held on Thursday, June 4, 2020 and Friday, 5, 2020. I
4 heard attorneys state that it was no longer necessary for the Court to receive an
5 Estimation of Claims amount from Judge James Donato, U.S. District Court Judge for the
6 Northern District of California. I disagree with that statement.

7 On June 5, 2020, Your Honor asked if it was true that the TCC or Debtors had
8 asked Judge Donato not to issue an order. The answer is Yes, it is true. In the *Joint*
9 *Statement of the Debtors and the Official Committee of Tort Claimants in Response to*
10 *Court's May 21, 2020 Request* they wrote, "If the Court declines to estimate the Fire
11 Victim Claims at the Aggregate Fire Victim Consideration, the Debtors and the TCC
12 respectfully request that the Court deem both the Estimation Approval Motion and the
13 Debtors' initial motion to estimate withdrawn and **dismiss these proceedings without**
14 **entering an order.**" (Exhibit A, Case 3:19-cv-05257-JD, Document Number 378, *Joint*
15 *Statement of the Debtors and the Official Committee of Tort Claimants in Response to the*
16 *Court's May 21, 2020 Request* page 11 of 12, lines 6-10) (emphasis mine)

17 There can be no question that the total amount of damages caused by these fires
18 must and will be calculated. It has to be done in order to establish the amount of each
19 claim that will be submitted to the Fire Victim Trustee for payment; to allow the Trustee
20 to calculate an Allowed Amount for each claim; and to allow the Trustee to calculate the
21 discount, if any, that will have to be applied to each Allowed Amount because of the
22 limited funds available. The only real questions are: when will it be done, who will pay
23 for it, and will it be part of a public record.

24 In your *Recommendation For Withdrawal of Reference of Proceeding In Part*,
25 Your Honor wrote, "...the estimation of the amount of money to be capped is critical for
26 a variety of reasons; in particular it is necessary to assure that the amount is reasonably
27 likely to provide for full satisfaction of the victims' claims for which it is established."
28 (Exhibit B, Bankruptcy Case 19-30088 (DM), Document 3648, *Recommendation For*

1 *Withdrawal of Reference of Proceeding In Part*, page 4 of 8, lines 17-21)

2 “The cases are inconclusive (and non binding in this circuit) on whether the
3 ‘purposes of confirming a plan’ language in the statute is adequate to protect countless
4 wildfire victims who have personal injury and wrongful death claims. Some conclude
5 that the estimation process is enough to fix the amount of the required fund leaving for
6 another day the determination of individual claimants’ entitlement to a share of that fund
7 as part of the ‘purposes of distribution’ language of the statute. Others recognize that the
8 two concepts cannot be unbundled and that the rights of the tort victims must be protected
9 by the Article III judge’s overseeing of that aspect of the non-core estimation process.”
10 (Exhibit B, Bankruptcy Case 19-30088 (DM), Document 3648, page 4 of 8, line 22
11 through page 5 of 8, line 8) Despite what the attorneys have said, those words are still
12 true.

13 The Debtors’ attorneys and the TCC’s attorneys tried to convince the Federal
14 District Court of Northern California’s Judge Donato to simply accept their number of
15 \$13.5 billion as an adequate estimate. (Exhibit A, Case 3:19-cv-05257-JD, Document
16 378, page 2 of the *Joint Statement* which is page 3 of 12 of the Docket Document, lines
17 11-19) On pages 5 through 9 of the *Joint Statement* they state the many sources they
18 looked to in order to reach the \$13.5 billion figure. The *Joint Statement* further states,
19 “Because expert reports were due to be submitted in the estimation proceedings one week
20 after the settlement was reached, **all of this data and analysis, including the data on**
21 **prior settlements, was well developed and available to the Parties during their**
22 **negotiation** of the Aggregate Fire Victim Consideration.” (Exhibit A, page 9 of the *Joint*
23 *Statement*, which is page 10 of 12 of the Docket Document, lines 18-21) (emphasis mine)

24 The Official Committee of Unsecured Creditors also urged Judge Donato to
25 accept \$13.5 billion as the Estimation amount. “For the foregoing reasons, the Creditors’
26 Committee submits the Court should estimate the Fire Victim Claims at \$13.5 billion and
27 conclude these proceedings.” (Exhibit C, Case 3:19-cv-05257-JD, Document 381,
28 *Statement Of Official Committee Of Unsecured Creditors Regarding Joint Statement Of*

1 *The Debtors and the Official Committee Of Tort Claimants In Response To The Court's*
2 *May 21, 2020 Request* page 4 of 4, lines 6-7)

3 So far Judge Donato has refused to simply accept \$13.5 billion as an adequate
4 estimate. (Exhibit D, *Minute Entry for proceedings held before Judge James Donato:*
5 *Motion Hearing held on 5/21/2020*)

6 Despite what the attorneys said in court on June 4, 2020, and what Mr. Julian said
7 in court on June 5, 2020, an estimate of the fire victims' total damages is still important.
8 Without that number how is the Court supposed to determine if \$13.5 billion plus the
9 Assigned Rights and Causes of Actions is an adequate amount to settle the fire victims'
10 claims?

11 We don't know the format of the reports that were available to those who
12 negotiated the Fire Victim Trust Agreement because they have refused to disclose them.
13 The information PG&E has been ordered to provide to the Federal District Court of
14 Northern California might be aggregate totals, however speaking as an accountant of over
15 40 years I believe the only reasonable way to calculate those totals is to look at real data
16 and prepare subtotals for each type of damage for each fire. That is because the cost of
17 rebuilding, for instance, in the City of Santa Rosa is different than the cost of rebuilding
18 in the Town of Paradise. Also, the trauma and amount of pain and suffering will
19 necessarily be different for someone who simply lost their home in a fire versus someone
20 who had to spend hours trapped in a car surrounded by fire, or someone who was directed
21 by CAL FIRE personnel to abandon their car and seek shelter under blankets on Optimo
22 Restaurant's parking lot while fire burned all around them.

23 Estimating the monetary damages caused by the fires will not be easy or
24 inexpensive. The fire victims should be spared as much of that pain as possible, and they
25 should be spared all of the cost of gathering data and creating formulas the Fire Victim
26 Trustee will need to calculate Allowed Amounts for each claim, **especially since the**
27 **Debtors and TCC have stated that the data has already been compiled and analyzed**
28 **by experts.**

1 PG&E has a problem. If PG&E is required to submit those schedules to the Court
2 those schedules become part of the record. If the total is added to the Fire Victim Trust
3 Agreement, it will become part of the public record. That is a public relations nightmare
4 for PG&E. If the victims are required to do all the work necessary to duplicate work
5 PG&E states has already been done to come up with totals for their individual claims not
6 only will they have to pay that expense and suffer an additional delay while the totals are
7 calculated, but also, the results will be shielded by a confidentiality clause:

8
9 “Similarly, the amount of any Fire Victim Claim that is
10 approved, accepted, or disallowed in whole or in part shall
11 kept confidential and shall only be disclosed to the Trustee,
12 the Claims Administrator, Claims Processor, the Neutrals,
13 and in respect of the preceding entities, their employees,
14 agents, professionals and advisors, the Fire Victim, the Fire
15 Victim’s authorized agent, or to any court of competent
16 jurisdiction, and, in the latter case, only then in a document
17 filed with the court under seal.” (Exhibit E, Bankruptcy
18 Case 19-30088, Document 6049-1 Filed 03/03/20, *Notice*
19 *Of Filing Of Proposed Fire Victim Trust Agreement And*
20 *Proposed Fire Victim Claims Resolution Procedures,*
21 *Exhibit A*, page 14 of the document, page 20 of 59 of the
22 Docket document.)

23 If PG&E is not required to produce the records required by the Federal District
24 Court of Northern California, the public will never see the total amount of damages
25 caused by these fires, and the public has a right to that information. It serves as a warning
26 of what PG&E might do in the future. Remember, these fires did not all occur in one
27 year. They span a period of a little more than three years. After the Butte Fire in 2015
28

1 PG&E had the opportunity to increase their maintenance efforts. They had the chance to
2 replace the piece of equipment that failed and caused the Camp Fire slightly over three
3 years later, and they ignored that opportunity. In fact, they were caught falsifying the
4 maintenance records they submitted as part of the terms of their probation. Putting the
5 total damages figure on the public record has a potential impact on whether or not the
6 California legislature passes a law currently under consideration that provides for the
7 takeover of PG&E in the event its equipment causes another huge and deadly fire.

8 For all of these reasons I respectfully request that the Court contact Judge Donato
9 to see when, or if, he will have an Estimation of Claims Order ready. I request that you
10 hold off on issuing an order confirming the plan if at all possible. In the event you decide
11 to confirm the plan without the information from Judge Donato, I ask that you include in
12 your confirmation order language that requires the Estimation of Claims amount to be
13 included in the final Fire Victim Trust Agreement.

14 Thank you.

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17 List of Attachments:

18 **Exhibit A:** Civil Case 3:19-cv-05257-JD, Document Number 378, *Joint Statement of the*
19 *Debtors and the Official Committee of Tort Claimants in Response to the Court's May 21, 2020*
20 *Request*

21 **Exhibit B:** Bankruptcy Case 19-30088 (DM), Document 3648, *Recommendation For*
22 *Withdrawal of Reference of Proceeding In Part*

23 **Exhibit C:** Civil Case 3:19-cv-05257-JD, Document 381, *Statement Of Official Committee Of*
24 *Unsecured Creditors Regarding Joint Statement Of The Debtors and the Official Committee Of*
25 *Tort Claimants In Response To The Court's May 21, 2020*

26 **Exhibit D:** *Minute Entry for proceedings held before Judge James Donato: Motion Hearing*
27 *held on 5/21/2020*
28

1 **Exhibit E:** Bankruptcy Case 19-30088, Document 6049-1 Filed 03/03/20, *Notice Of Filing Of*
2 *Proposed Fire Victim Trust Agreement And Proposed Fire Victim Claims Resolution*
3 *Procedures, Exhibit A*